MOTION FILED
AUG 15 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-611

UNITED STATES OF AMERICA, ET AL., *Petitioners*

v.

C. D. KASMIR AND JERRY A. CANDY, *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS, AMICUS CURIAE

STANLEY H. STEARMAN
Attorney for Amicus Curiae
1717 Pennsylvania Ave., N.W.
Washington, D. C. 20006
(202) 298-9040

MARK A. GOLD,
Of Counsel

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-611

UNITED STATES OF AMERICA, ET AL., *Petitioners*

v.

C. D. KASMIR AND JERRY A. CANDY, *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The National Society of Public Accountants (NSPA) respectfully moves for leave to file the attached brief amicus curiae in this case. The consent of the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

The interest of the National Society of Public Accountants arises from the relationship of *United States* v. *Kasmir,* 499 F. 2d 444 (5th Cir. 1974) to the previously decided case of *Couch* v. *United States,* 409 U.S.

322 (1973). The *Couch* Court found no Fifth Amendment privilege against compulsory self-incrimination for personal papers summoned by the Internal Revenue Service from taxpayer's accountant. Constructive possession, the Court said, was not present there because a legitimate expectation of privacy was absent.

The instant case and its companion are important offshoots of the *Couch* decision. They highlight the uncertainty injected into attorney-client-accountant relationships by the *Couch* holding. The Government relies heavily on *Couch* to support its conclusion that the *Kasmir* taxpayer is not entitled to the Fifth Amendment privilege. It is believed that the brief which amicus curiae is requesting permission to file will contain a more complete argument supporting the fiduciary nature of accountants who offer and perform tax return preparation services.

Additionally, amicus curiae hopes to shed some light on the nature of accountants' workpapers. The nature of such documents is essential to the "private paper" determination thought crucial by petitioner.

Respectfully submitted,

STANLEY H. STEARMAN
Counsel for Amicus Curiae
1717 Pennsylvania Ave., N.W.
Washington, D. C. 20006

BRIEF AMICUS CURIAE

INDEX

Page

Interest of Amicus 1

ARGUMENT:

I. The *Couch* Decision Should Be Reexamined Because of the Strained Effect It Has Had Upon Subsequent Fifth Amendment Decisional Law. 3

A. The *Couch Ratio Decidendi.* 3

B. Erroneously, the *Couch* Court Attaches Constitutional Significance to the Accountant's Disclosure Duty 4

C. The Accountant-Attorney Distinction Is Ill-Founded if Utilized to Ascertain a Legitimate Expectation of Privacy 10

II. The Fifth Amendment Privilege Against Compulsory Self-Incrimination Prohibits the Enforceability of Internal Revenue Summonses Seeking Production of Accountants' Workpapers Used in the Preparation of Tax Returns 18

A. Accountants' Workpapers Are Private Papers When in Taxpayers' Possession and Not Third-Party Records as the Petitioner Avers. 18

1. Petitioner's "possession of private papers" test 18

2. Petitioner's attempt to classify accountants' workpapers as third-party documents falls short 21

B. Petitioner's Emphasis on *Couch* Is an Additional Reason for Reexamination 26

Conclusion 27

Appendix A—National Society of Public Accountants Rules of Professional Conduct 1a

Appendix B—National Society of Public Accountants Rules of Professional Conduct for Members in Tax Practice 1b

INDEX OF CITATIONS

Page

CASES:

Bellis v. *United States*, 417 U.S. 85 (1974) 18, 20, 21, 23
Boyd v. *United States*, 116 U.S. 616 (1886) 17, 19, 20
Couch v. *United States*, 409 U.S. 322 (1973) ..... *passim*
Grant v. *United States*, 227 U.S. 74 (1913) 18, 20, 21, 22, 23
Griswold v. *Connecticut*, 381 U.S. 479 (1965) 21
Murphy v. *Waterfront Comm'n*, 378 U.S. 52 (1964) .. 6
Schwimmer v. *United States* 232 F.2d 855 (8th Cir. 1956) 4
United States v. *Cohen*, 388 F.2d 464 (9th Cir. 1967) .. 24
United States v. *Fisher*, 500 F.2d 683 (3d Cir. 1974), *cert. granted*, 420 U.S. 906 (1975) 3, 4, 12, 18, 20
United States v. *Guterma*, 272 F.2d 344 (2d Cir. 1959) 4
United States v. *Kasmir*, 499 F.2d 444 (5th Cir. 1974), *cert. granted*, 420 U.S. 906 (1975) ..... *passim*
United States v. *White*, 322 U.S. 694 (1944) .. 19, 20, 21, 23
United States v. *White* 477 F.2d 757 (5th Cir. 1973) 4, 8, 12
Warden v. *Hayden*, 378 U.S. 294 (1967) 20
Wheeler v. *United States*, 226 U.S. 478 (1913) 18, 20, 21, 23
Wilson v. *United States*, 221 U.S. 361 (1911) ... 20, 24, 25

CONSTITUTIONAL, STATUTORY AND CODE OF FEDERAL REGULATIONS PROVISIONS:

U.S. Constitution, Fifth Amendment ..... *passim*
26 U.S.C. § 7206 (1) 7
26 U.S.C. § 7206 (2) 6, 7, 10, 11
26 U.S.C. § 7207 7
26 U.S.C. § 7602 ..... 2, 8
31 C.F.R. Subtitle A, Part 10 (United States Treasury Department Circular No. 230) 15, 16

MISCELLANEOUS SOURCES CITED:

American Bar Association Code of Professional Responsibility Canon 4 ..... 13, 16

American Bar Association Code of Professional Responsibility Ethical Consideration 4-4 13

American Institute of Certified Public Accountants Professional Ethics Rule 301 15

Page

National Society of Public Accountants Rule of Professional Conduct No. 1. ..... 13, 14, 16, 1a

National Society of Public Accountants Rules of Professional Conduct for Members in Tax Practice Nos. 6, 7, 10 and 16 ..... 13, 14, 16, 2b, 3b

Statement on Responsibilities in Tax Practice No. 6, Knowledge of Error: Return Preparation (New York: Division of Federal Taxation of the AICPA, August, 1970) pp. 4-5 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-611

UNITED STATES OF AMERICA, ET AL., *Petitioners*

v.

C. D. KASMIR AND JERRY A. CANDY, *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS, AMICUS CURIAE

INTEREST OF AMICUS

The National Society of Public Accountants (NSPA) is a nationwide, non-profit professional society of more than 16,000 members. NSPA is dedicated, *inter alia,*

to promoting the highest standards of ethical conduct among accountants in public practice. NSPA further serves the accounting profession and general public by promoting and advocating equitable and constitutional statutory and case law at the state and federal levels. NSPA publishes and circulates the monthly magazine entitled THE NATIONAL PUBLIC ACCOUNTANT which is a highly regarded professional and technical journal.

During its thirty year existence, NSPA has been keenly aware of developments which affect the accountant-client relationship and the accountant-client-attorney relationship. Freedoms protected by the Fifth Amendment to the Constitution are of extraordinary importance to accountants in public practice.

At the accounting profession's core is the concept that the accountant is privy to all of a client's personal and private information which bears upon or relates to the scope of the engagement in question. The proper scope of the Fifth Amendment privilege against compulsory self-incrimination should encompass the realities of this historical fact, and take cognizance of the modern accountant-client relationships.

Amicus agrees with the petitioner in No. 74-611 that "[t]he issue raised in these cases is of major importance to the conduct of federal tax investigations by the Internal Revenue Service" (Pet. Br. 18). Questions arising from Fifth Amendment and Internal Revenue Code Section 7602 (administrative summons) situations concern all accountants in public practice who offer to clients tax counseling and tax return preparation services.

ARGUMENT

I. THE COUCH DECISION SHOULD BE REEXAMINED BECAUSE OF THE STRAINED EFFECT IT HAS HAD UPON SUBSEQUENT FIFTH AMENDMENT DECISIONAL LAW.

A. The Couch Ratio Decidendi

The accountant-client relationship is examined by this Court at length in *Couch* v. *United States,* 409 U.S. 322 (1973). *Couch* stands for the proposition that the Fifth Amendment freedom from personal, compulsory self-incrimination is to be measured by a possession or constructive possession yardstick:

> "*Couch* simply articulates that ownership of papers *per se* does not carry with it a vesting of the privilege against self-incrimination, that actual possession of documents bears the most significant relationship to Fifth Amendment protections . . . , and that there may be examples where constructive possession is so clear or relinquishment of possession is so temporary and insignificant as to leave the personal compulsions upon the accused substantially intact." *United States* v. *Fisher,* 500 F. 2d 683, 691 (3d Cir. 1974), *cert. granted,* 420 U.S. 906 (1975).

Lack of actual possession,[1] the Court concedes, is not an absolute bar to invocation of an accused's Fifth

---

[1] The *Couch* ruling remains somewhat opaque. The majority vacillates when rebutting Mr. Justice Marshall's dissent:

> "We do indeed attach constitutional importance to possession, but only because of its close relationship to those personal compulsions and intrusions which the Fifth Amendment forbids. Yet, contrary to any intimation in the dissent, we do not adopt any *per se* rule. We also decline to conjecture broadly on the significance of possession in cases and circumstances not before this Court." *Couch* v. *U.S.,* 409 U.S. 322, 336 n. 20 (1973).

Amendment rights.[2] Constructive possession becomes apparent when the onus of personal compulsion remains with the accused albeit dispossessed of the documents under scrutiny. *Couch* v. *United States, supra,* at 333; *accord, Schwimmer* v. *United States,* 232 F. 2d 855 (8th Cir. 1956); *United States* v. *Guterma,* 272 F. 2d 344 (2d Cir. 1959).

Constructive possession has, as its linchpin, an expectation of privacy which would, by necessity, accompany the transferred documents into the hands of the ultimate possessor. The issue is whether "the expectations of privacy accompanying the taxpayers' *transference of records*... [are] such that the taxpayer *retained constructive possession.*" *United States* v. *Fisher, supra,* at 701 (Hunter, J., concurring in part and dissenting in part). The taxpayer will be unable to seek Fifth Amendment protection "unless . . . [he] is actually in possession of documents. . . or clearly has constructive possession. . . because he will not be the object of any impermissible governmental compulsion." *United States* v. *White,* 477 F. 2d 757, 763 (5th Cir. 1973).

B. Erroneously, the Couch Court Attaches Constitutional Significance to the Accountant's Disclosure Duty.

Little comfort for the taxpayer who seeks a fair compromise between constitutional protections and In-

[2] Writing for the majority in *United States* v. *Kasmir,* 499 F. 2d 444, 448 (5th Cir. 1974), *cert. granted,* 420 U.S. 906 (1975), Judge Thornberry succinctly summarizes the *Couch* Court's view as follows:

> "But the Court was careful to note that 'actual possession' is not necessarily the *sine qua non* for successful assertion of the Fifth Amendment privilege . . . ."

ternal Revenue Service enforcement machinery is found in the Court's appraisal:

> "* * * [T]here can be little expectation of privacy where records are handed to an accountant, *knowing that mandatory disclosure of much of the information therein is required in an income tax return.* What information is not disclosed is largely in the accountant's discretion, not petitioner's. Indeed, the accountant himself risks criminal prosecution if he willfully assists in the preparation of a false return. 26 U.S.C. § 7206 (2). His own need for self-protection would often require the right to disclose the information given him. Petitioner seeks extensions of constitutional protections against self-incrimination in the very situation where obligations of disclosure exist and under a system largely dependent upon honest self-reporting even to survive. *Couch* v. *United States, supra,* at 335 (emphasis supplied).
>
> * * * *
>
> "The privilege cannot extend, however, to the protection of a taxpayer's records conveyed to a retained accountant for use in preparation of an income tax return, where the accountant is himself obligated to prepare a complete and lawful return. 26 U.S.C. § 7206 (2)." *Id.,* at 337-338 (Brennan, J., concurring).

By this reasoning, the Court finds no "expectation of protected privacy or confidentiality" upon the transfer by the taxpayer to the accountant of private financial records. *Id.,* at 336. Expectation of privacy is the telltale when extending the Fifth Amendment protection against governmental compulsion to non-possessory fact situations.

The *Couch* majority places signal emphasis upon the accountant's mandatory obligation to disclose informa-

tion which, theretofore, was of a private and personal nature, and had been within the "private enclave where [one] may lead a private life. . . ." *Murphy* v. *Waterfront Comm'n,* 378 U.S. 52, 55 (1964), quoting *United States* v. *Grunewald,* 233 F.2d 556, 581-582 (2d Cir. 1956) (Frank, J., dissenting), *rev'd* 353 U.S. 391 (1957). Jurists are hard-pressed to recognize an expectation of privacy when information is subject to mandatory disclosure. Admittedly, this is a persuasive statement on its face, but less dispositive when the accountant-client-attorney relationship is juxtaposed with the Internal Revenue Code.

Amicus concurs that the issue in "[i]ts most distilled form, . . . is whether the taxpayer has a sufficient legitimate expectation of privacy in the summoned records to warrant the label of constructive possession." *United States* v. *Kasmir,* 499 F. 2d 444, 451-452 (5th Cir. 1974). The *Couch* taxpayer was said to have no legitimate expectation of privacy in records given to an accountant for the purpose of preparing the taxpayer's personal income tax returns.

A "significant point" the Court says is the accountant's independent contractor status. *Couch* v. *United States, supra,* at 324, 334 n. 18. Presumably, Section 7206 (2) of the Internal Revenue Code of 1954, 26 U.S.C. 7206 (2) [3] creates for tax return preparers a

[3] Section 7206 (2) of the Internal Revenue Code of 1954, 26 U.S.C. 7206 (2), is as follows:

SECTION 7206 FRAUD AND FALSE STATEMENTS

Any person who—

(2) Aid or Assistance,—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document . . . .

mandatory obligation to disclose to the Service all of a client's personal and confidential financial data within the preparers' possession. Yet, I.R.C. Section 7206(2) creates liability encompassing "any person" who aids or assists the preparation of a taxpayer's federal income tax return. "Any person" would necessarily bring independent contractor accountants, employee accountants, attorneys functioning as tax return preparers and commercial tax return preparers within the class susceptible to prosecution for violation of I.R.C. 7206(2). Notwithstanding the criminal prosecution risk for multiple parties, the Court finds constitutional significance only when the independent contractor accountant labors under such coercive influence.

The Internal Revenue Code places ultimate responsibility for information and factual disclosure upon the taxpayer himself.[4] Taxpayer and employee accountants are under no less a mandatory obligation to disclose supporting documentation than the retained independent public accountant. Nonetheless, the *Couch* Court is anxious to distinguish between accountants having like mandatory disclosure duties:

> "[H]is status is that of an independent contractor. He actually did 'very little work for the petitioner', had many other clients, and was compensated by the job.

[4] Sections 7206 (1) and 7207 of the Internal Revenue Code of 1954, 26 U.S.C. 7206 (1) and 7207.

'This is a *significant point.* The Government noted in oral argument:

'In the Internal Revenue Service practice, so long as the taxpayer has retained possession of the records and they are being used only by his full-time employees or others on the taxpayer's premises . . . we ordinarily . . . issue the summons to the taxpayer. . . . And if the taxpayer chooses to plead the privilege against self-incrimination, that is up to the taxpayer.' " *Couch* v. *United States, supra,* at 334 n. 18 (references omitted) (emphasis supplied).[5]

It would appear sheer casuistry to hold the mandatory disclosure obligation meaningless when records are in the taxpayer's possession or in his employee's possession; yet, critically important when the self-same records are in the hands of the taxpayer's independent contractor accountant. What legerdemain is this?

If amicus interprets *Couch, White* and *Kasmir* correctly, the privilege against compulsory self-incrimination could be invoked properly by the taxpayer to resist an I.R.C. Section 7602 summons issued to an employee accountant—even though the employee accountant is under the same statutory compulsion as the independent contractor accountant.[6] If the expectation of privacy is to be vitiated by the Internal Revenue Code mandatory disclosure duty, the accountant's employment status—whether independent contractor or ser-

[5] Petitioner in No. 74-611 agrees with the *Couch* Court and finds Fifth Amendment significance "between records prepared by the taxpayer's full-time employee . . . and records prepared by an outside accountant." (Pet. Br. 31 n. 15).

[6] This same conclusion would be reached if the Service tried to obtain the employee accountant's workpapers.

vant—should have no influence upon the constitutional issue at hand. Disclosure or nondisclosure should be identical for each.

Mr. Justice Douglas demonstrates the patent weakness of the mandatory disclosure test when used to quantify the expectation of privacy by stating:

> "The majority notes that 'the accountant himself worked neither in petitioner's office nor as her employee.' I cannot see how that factor bears on whether the 'ingredient of personal compulsion against the accused' is present, or whether the accountant was a confidant. The majority would seem to suggest, however, that petitioner, because her business did not call for, or because she could not afford, a full-time accountant, deserves less protection under the Fifth Amendment than a taxpayer more fortunately situated." *Couch* v. *United States, supra,* at 342 n. 4 (Douglas, J., dissenting).

If the mandatory disclosure obligation cannot penetrate taxpayers' "private inner sanctum," *Id.,* at 327, then the issue is, in actuality, a specious one having no relationship to the Fifth Amendment guarantee against compulsory self-incrimination. Internal Revenue Code mandatory disclosure, if applied as the *Couch* majority prescribes, results in an illogical application of the expectation of privacy test. The spurious nature of such a distinction is self-evident. Amicus submits that a taxpayer/client of an independent contractor accountant legitimately anticipates and expects the same degree of privacy from third party intrusion that his own employee/servant accountant affords him. Constructive possession, as measured by the expectation of privacy test, must be solidly based on something other than the absence of a mandatory disclosure duty test.

The Fifth Amendment freedom against compulsory self-incrimination is not lessened or abated when documents are transferred to an independent contractor accountant (accountant in public practice).

C. The Accountant-Attorney Distinction Is Ill-Founded if Utilized to Ascertain a Legitimate Expectation of Privacy.

Based upon *Couch,* the constructive possession issue may well rest upon artificial distinctions drawn between accountants and attorneys;[7]

> "Stripped of any constitutional perspective, the factual differences between this case [*Kasmir*] and *White* [*United States* v. *White,* 477 F.2d 757 (5th Cir. 1973)] may seem insignificant. . . . As a matter of constitutional law, we can see no other way to resolve the apparent dilemma in a manner which is consistent with the nature of the right against self-incrimination. . . ." *United States* v. *Kasmir, supra,* at 453.

Fellow professional brethren in the legal field fare much better when the legitimate expectation of privacy test is applied to determine constructive possession. Ill-founded indeed is the accountant-attorney distinction if the sole distinguishing factor is the mandatory disclosure language found at I.R.C. Section 7206 (2). As pointed out in Section I B, *supra,* taxpayer's employee accountant functions under the same liability language as does the independent contractor account-

[7] Couch has forced many sophisticated taxpayers to employ independent contractor accountants through an attorney. It is thought this ensures full Fifth Amendment protection to the taxpayer; for the accountant, as counsel's employee, is then an inextricable part of the attorney-client relationship.

Improvident taxpayers employ accountants directly and live with the uncertainty engendered by *Couch.*

ant; yet, the *Couch* Court goes to great lengths to preserve the Fifth Amendment privilege inviolate in this instance.

If the Court's logic is to be understood, an employee accountant and an attorney furnish the taxpayer with identical legitimate expectations of privacy.[8] The *Kasmir* Court highlights the very nature of the attorney's role. Based upon ethics and professional responsibility, in contradistinction to the accountant's duty to disclose, the attorney's role is said to justify an expectation of privacy:

> "[W]here the taxpayer transfers potentially incriminating materials which he physically possesses to his attorney pursuant to an attorney-client relationship, *the taxpayer's legitimate expectation of privacy with regard to the use of the materials should be quite different from his legitimate expectations as to its use in the hands of an independent accountant preparing tax returns.* While the accountant has a legal duty to disclose, *the attorney has a strict, ethical obligation to prevent disclosure. The ethical obligation is broader than and independent of the attorney-client privilege, which is admittedly not available here.* The Disciplinary Rules of the Code of Professional Responsibility prepared by the American Bar Association absolutely forbid an attorney from knowingly revealing either a 'confidence' or a 'secret' of his client. . . . *But even where there is no attorney-client privilege* in certain material . . . the taxpayer client may still have a legitimate ex-

[8] The Couch decision, in effect, states that a taxpayer can interpose the self-incrimination argument if his employee accountant possesses documents, but not if his independent contractor accountant has possession—even though I.R.C. 7206 (2) holds both accountants liable for non-disclosure.

> pectation with regard to that material because of the *attorney-client relationship,* an expectation of privacy which helps to give substance to a Fifth Amendment privilege contention."[9] *United States* v. *Kasmir, supra,* at 453. (footnote omitted) (emphasis supplied).

Amicus submits the attorney-client "relationship" found to have constitutional significance in *Couch, White, Fisher* and *Kasmir* is akin and analogous to the "relationship" between an accountant and his client for purposes of income tax return preparation. Ethical and fiduciary responsibilities are as much an integral part of the accounting profession as the legal profession. Stripped of the specious mandatory disclosure argument and the attorney-client privilege—which is admittedly inapposite in this instance—, the attorney-accountant distinction is infinitesimal at best.

Mr. Justice Douglas soundly equates the attorney-client relationship with its accountant-client counterpart:

> "The majority contends, however, that petitioner cannot reasonably claim 'an expectation of protected privacy or confidentiality.' The reasons asserted for this position overlook the nature of the accountant-client relationship. The accountant, an agent for a specified purpose—i.e., completing the petitioner's tax returns—bore certain fiduciary

[9] The accountant-attorney distinction, is also noted in *Fisher:*

> "While standing alone it would be a slender reed, indeed, the court did make a comment in *Couch* which can be read to indicate a material difference between the accountant-client and the attorney-client relationship." *United States* v. *Fisher,* 500 F.2d 683, 697 n.9 (3d Cir. 1974) (Hunter, J., concurring in part and dissenting in part).

See also *United States* v. *White,* 477 F. 2d 757, 766 (5th Cir. 1973).

> responsibilities to petitioner. One of those responsibilities was not to use the records given him for any purpose other than completing the returns. Under these circumstances, it hardly can be said that by giving the records to the accountant, the petitioner committed them to the public domain. *Couch* v. *United States, supra,* at 340 (Douglas, J., dissenting).

Mr. Justice Marshall's statement "that, privileged or not, a disclosure to an accountant is rather close to disclosure to an attorney," *Id.,* at 351 (Marshall, J., dissenting), is also supported factually.

As indicated, *supra,* great emphasis is placed upon attorneys' adherence to the American Bar Association Code of Professional Responsibility—Canon 4 in particular.[10] Preservation of clients' "confidences" and "secrets" is also mandated by codes of ethics and professional conduct governing the practice of public accountancy and tax return preparation services. Two of the foremost professional accounting societies—the National Society of Public Accountants (NSPA), amicus curiae, and the American Institute of Certified Public Accountants (AICPA)—have promulgated and published codes of professional ethics every bit as stringent and demanding as ABA Canon 4.

NSPA Rule of Professional Conduct No. 1 and NSPA Rules of Professional Conduct for Members in

[10] ABA Canon 4: *A Lawyer Should Preserve the Confidences and Secrets of a Client.*

> Ethical Consideration (EC) 4-4 provides in part: "The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge."

Tax Practice Nos. 6, 7, 10 and 16 read respectively as follows:[11]

> NSPA Rule of Professional Conduct No. 1-"A member shall not violate the confidential relationship between himself and his client or former client."
>
> NSPA Rules of Professional Conduct for Members in Tax Practice—
>
> No. 6 "In situations where the applicable law is unsettled, or where the application of the law to the facts at hand is uncertain, the member has a duty to explain the probable effects of the various alternatives to the taxpayer who must make the final decision as to the position to be taken.
>
> No. 7 "A member must not permit his client to treat an item having a bearing on his tax liability in a manner for which there is no reasonable basis in law or fact. Should the client insist upon the item being stated on the return incorrectly, the member should withdraw and refuse to prepare the return.
>
> No. 10 *"If the client will not permit sufficient disclosures to be made to properly calculate the tax due, then the member should withdraw from the assignment.*
>
> No. 16 *"A member has no obligation to communicate with the Internal Revenue Service with respect to a person whom he suspects has been grossly negligent or who may have committed fraud against the government."* (emphasis supplied).

[11] The National Society of Public Accountants Rules of Professional Conduct and Rules of Professional Conduct for Members in Tax Practice are reprinted as Appendices A and B, respectively, in this brief.

The AICPA takes a similar view by stating:

> "The CPA is neither obligated to inform the Internal Revenue Service nor may he do so without his client's permission. In appropriate cases, particularly where it appears that the Internal Revenue Service might assert the charge of fraud, the client should be advised to consult his attorney before taking any action." Statement on Responsibilities in Tax Practice No. 6, Knowledge of Error: Return Preparation (New York: Division of Federal Taxation of the AICPA, August, 1970) at 4-5.[12]

Tenuous, indeed, becomes the accountant-attorney "distinction" when we review the Treasury Department's attitude toward "mandatory disclosure." United States Treasury Department Circular No. 230, 31 CFR Subtitle A, Part 10, Sections 10.0-10.93, governs the practice of attorneys, certified public accountants and enrolled agents (public accountants) before the Internal Revenue Service. Accountant and attorney alike are subject to the regulations found at Sections 10.20 and 10.21 of Circular 230. Section 10.20(a) forbids an attorney, certified public accountant or enrolled agent (public accountant) from "[neglecting] or [refusing] promptly to submit records or information . . . *unless he believes in good faith and on reasonable grounds that such record or information is privileged or that the request for, or effort to obtain, such record or information is of doubtful legality.*" (emphasis supplied). Section 10.21 similarly indicates the Treasury

[12] AICPA Code of Professional Ethics Rule 301 is in full accord with the National Society of Public Accountants' promulgations:

> "*Confidential client information.* A member shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client."

Department's insistence upon a primary fiduciary responsibility to clients—not to the Department or the Internal Revenue Service as the *Couch* Court concludes. Section 10.21 reads, as follows:

> "*Knowledge of client's omission.* Each attorney, certified public accountant, or enrolled agent who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by law to execute in connection with such matter, *shall advise the client promptly of the fact of such non-compliance, error, or omission.*" (emphasis supplied).

Treasury Circular 230, read in conjunction with the National Society of Public Accountants' and the American Institute of Certified Public Accountants' Codes of Ethics, weaves a formidable blanket of ethical and fiduciary restrictions for the accountant in public practice. ABA Canon 4 demands of attorneys no more than NSPA Rule of Professional Conduct No. 1 and NSPA Rules of Professional Conduct for Members in Tax Practice Nos. 6, 7, 10 and 16 demand of accountants in public practice.[13]

Amicus is concerned with the constitutional rights of taxpayer/ clients; the fulfilment of the public's reasonable belief and reliance upon the discretion and sanctity of the confidential and highly vulnerable personal data placed in the tax counselor's care is paramount.

---

[13] Indeed, one wonders whether a mandatory disclosure duty at all exists. See Section I B, *supra*. Amicus does not reach this question, but submits only that the mandatory disclosure onus, if any, is identical to attorneys and accountants.

Divergence of ownership and possession in financial documents is a fact of modern commercial practice. The Fifth Amendment must meet post-*Boyd*[14] situations where possession and ownership do not conjoin.[15]

For tax return preparation purposes, your amicus submits that the expectation of privacy necessary to ascertain constructive possession does, in fact, exist in client's papers and workpapers in the accountant's possession. Amicus strongly disagrees that the public has "little expectation of privacy" when retaining a professional accountant to aid in the filing of tax returns. The accountant-client relationship preserves Fifth Amendment guarantees for clients as does the attorney-client relationship. Taxpayers fully anticipate a reasonable likelihood of privacy free from governmental compulsion when confidential records are transferred to an accountant for tax return purposes. Both the profession and the public expect as much.

---

[14] *Boyd* v. *United States*, 116 U.S. 616 (1886).

[15] Mr. Justice Douglas comments upon the taxpayers' plight:

> "Our tax laws have become so complex that very few taxpayers can afford the luxury of completing their own returns without professional assistance. If a taxpayer now wants to insure the confidentiality and privacy of his records . . . he must forgo such assistance. To my mind, the majority thus attaches a penalty to the exercise of the privilege against self-incrimination." *Couch* v. *United States, supra*, at 342 (Douglas, J., dissenting).

II. THE FIFTH AMENDMENT PRIVILEGE AGAINST COMPULSORY SELF-INCRIMINATION PROHIBITS THE ENFORCEABILITY OF INTERNAL REVENUE SUMMONSES SEEKING PRODUCTION OF ACCOUNTANT'S WORKPAPERS USED IN THE PREPARATION OF TAX RETURNS.

A. Accountants' Workpapers Are Private Papers When in Taxpayers' Possession and Not Third-Party Records as the Petitioner Avers.

1. Petitioner's "possession of private papers" test.

Petitioner in No. 74-611 concedes that the ultimate disposition of the Fifth Amendment issue is predicated on "whether the taxpayer's initial possession of the accountant's workpapers was a sufficient basis for invoking the privilege" (Pet. Br. 17). Subsequent transfer to an attorney, petitioner claims, cannot infuse the taxpayer with any greater Fifth Amendment protection:

> "We agree with the court below . . . that the transfer of the accountant's workpapers to the attorney should neither enlarge nor decrease whatever Fifth Amendment privilege the taxpayer could originally assert when they were in his possession" (Pet. Br. 36) (footnote omitted).

The taxpayer's initial possession, therefore, is the crux of the issue before the Court. Petitioner has engrafted *Wheeler,*[16] *Grant,*[17] and *Bellis*[18] onto *Couch* and views *Kasmir* and *Fisher* as a logical extension:

> "Indeed, the present cases would appear to follow *a fortiori* from *Wheeler* and *Grant* which held that even if the claimant could assert both a proprietary and a possessory interest in documents which are not his personal papers, such documents are not subject to a claim of the privilege" (Pet. Br. 26).

[16] *Wheeler* v. *United States,* 226 U.S. 478 (1913).

[17] *Grant* v. *United States,* 227 U.S. 74 (1913).

[18] *Bellis* v. *United States,* 417 U.S. 85 (1974).

Based on the line of cases mentioned, *supra,* petitioner fashions a formula which, if successfully met, justifies Fifth Amendment interposition:

> "[D]ecisions of this Court have established that the Fifth Amendment privilege against self-incrimination is not available to prevent the compulsory production of documents *unless they are the private papers of the claimant and are in his possession*" (Pet. Br. 19) (emphasis supplied).

Broken into components, petitioner's formula is (1) non-custodial (personal) possession or constructive possession of (2) personal records.[19] Petitioner alleges the *Kasmir* taxpayer failed in both areas. Accountants' workpapers, petitioner avers, "are not the client's private papers" therefore "the client has no greater right to withhold them from proper legal process than does . . . [a third party] possessor . . ." (Pet. Br. 15). To petitioner's thinking, the distinction between private papers and third-party records is central to the *Kasmir* appeal.

Analysis of the Fifth Amendment protection against compulsory self-incrimination begins with *Boyd* v. *United States,* 116 U.S. 616 (1886). In an oft-quoted statement, the Court noted that "any forcible and compulsory extortion of a man's own testimony or of his

[19] *United States* v. *White,* 322 U.S. 694 (1944), employs the terms "personal documents" (p. 698), "personal records" (p. 701), "private records" (p. 699) and "private papers" (p. 704). Petitioner in No. 74-611 also uses such terms interchangeably (Pet. Br. 22).

private papers to be used as evidence to convict him. . . . ," *Id.*, at 630 (emphasis supplied), violates the Fifth Amendment. Simultaneous ownership and possession afforded the *Boyd* Court a solid basis by which to ascertain a violation of claimant's privilege against self-incrimination.

Subsequent to *Boyd,* the Court has applied Fifth Amendment principles to situations in which ownership and possession did not conjoin, and documentary issues involved relationship to impersonal business entities. Generally, the Court has concluded that records of corporations, banks, unions and partnerships, to a certain degree, cannot be the subject of the personal privilege against self-incrimination albeit incriminatory to the custodian.[20] Reaching this conclusion, the Court has undergone a "shift in emphasis from property to privacy." *Warden* v. *Hayden,* 387 U.S. 294, 304 (1967); *United States* v. *Fisher, supra,* at 690. The Court, *Bellis* v. *United States,* 417 U.S. 85 (1974), highlights the "private enclave" which now defines Fifth Amendment parameters:

> "The Court's decisions holding the privilege inapplicable to the records of a collective entity also reflect a second, though obviously interrelated policy underlying the privilege, the protection of an individual's right to a 'private enclave where he may lead a private life' *Murphy* v. *Waterfront Comm'n,* 378 U.S. 52, 55 (1964). We have recognized that the Fifth Amendment 'respects a private inner sanctum of individual feeling and thought'—an inner sanctum which necessarily includes an individual's papers and effects to the extent that the privilege bars their compulsory production and authentication—and 'proscribes state intrusion to extract self-condemnation.' *Couch* v. *United States, supra,* at 327. See also *Griswold* v. *Connecticut,* 381 U.S. 479, 484 (1965)." *Bellis* v. *United States, supra,* at 91.

[20] For example, *Wheeler* v. *United States, supra, Grant* v. *United States, supra* and *Wilson* v. *United States,* 221 U.S. 361 (1911) involved records of corporate entities; *United States* v. *White, supra,* pertains to an unincorporated labor union and in *Bellis* v. *United States, supra,* the Court examined partnership records.

Sound is petitioner's conclusion that "the privilege 'should be limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records' (*United States* v. *White,* 322 U.S. 694, 701)" (Pet. Br. 13).

2. Petitioner's attempt to classify accountants' workpapers as third-party documents falls short.

Petitioner would have the Court equate personal financial records with records of a collective, impersonal entity to bring the instant case within the custodial possession cases (*Wheeler, Grant, White* and *Bellis*). The government states that the requisite personal or private character of the documents is absent, as it was in *White,* where the Court could ascertain "no element of personal privacy." *United States* v. *White,* 322 U.S. 694, 700 (1944). Accountants' workpapers, the government contends, are not the necessary personal, private papers which the Fifth Amendment protects from governmental compulsion. Petitioner flatly states accountants' workpapers are to be classed as "third-party records",[21] and not taxpayer's personal papers,

[21] Although petitioner does not proffer a clear definition of "third-party records", the government does say "if the claimant can assert neither possession nor ownership of papers, they are simply third-party records with respect to which the privilege is unavoidable" (Pet. Br. 21 n. 6).

therefore, not subject to a privilege claim. Petitioner maintains,

> "*Wheeler, Grant,* and *Bellis* establish that documents do not become 'private' or 'personal for Fifth Amendment purposes merely because the claimant physically possesses them, even if that possessior is under a claim of title. Here, the records at issue are accountants' workpapers which were created by the taxpayer's accountant in each case and were owned and maintained by the accountant until the commencement of the investigations. *They obviously were not private papers of the taxpayers and . . . did not become so upon being handed over by the accountants to the taxpayers . . .*" (Pet. Br. 23) (emphasis supplied).

Surely petitioner begs the issue. If petitioner is to have its way, workpapers are to be labelled as third-party documents pursuant to a *per se* determination notwithstanding the highly confidential and personal nature of the data contained therein. This cannot be the case; for financial data is clearly evidence to be protected by the Fifth Amendment.

Using *Grant* as authority, petitioner also asks the Court to examine the "essential character of the documents" (Pet. Br. 22) to determine if the papers are subject to the privilege. "With respect to documentary evidence there may be need for a factual determination whether the documents are the private papers of the claimant" (Pet. Br. 18).

Petitioner insists that "accountant's workpapers cannot be transferred into the private papers of his client" (Pet. Br. 30) (footnote omitted). No alchemy is involved here. We try merely to meet the govern-

ment's non-custodial possession of private documents test. Looking at the "essential nature" of the documents, as the government suggests, we ascertain that the accountants' workpapers involved in *Kasmir* are not the financial records of a separate entity (see *Bellis, Wheeler, Grant,* and *White*) but a reflection and compilation of taxpayers' own private financial affairs. This in itself is not important, says the government:

> "[W]orkpapers prepared by an outside accountant are not private papers of the client to whom they pertain. The mere fact that such records may reflect the taxpayer's financial transactions does not in itself create a Fifth Amendment privilege to bar disclosure" (Pet. Br. 31) (footnote omitted).

In light of petitioner's reliance on *Bellis,* this is a tenuous position.

Speaking for the majority, Mr. Justice Marshall views the Fifth Amendment privilege as having a clear application to "business records of the sole proprietor or sole practitioner as well as to personal documents containing more intimate information about the individual's private life." *Bellis* v. *United States, supra,* at 87-88. This application is in contradistinction to "a substantial claim of privacy or confidentiality . . . with respect to the financial records of an organized collective entity" where "[c]ontrol of such records is generally strictly regulated by statute . . . and access to the records is generally guaranteed to others in the organization." *Bellis* v. *United States, supra,* at 92. The accountant's workpapers in *Kasmir* contain the requisite element of privacy and confidentiality essential to the privilege.

In *United States* v. *Cohen,* 388 F. 2d 464 (9th Cir. 1967), the relationship between an independent accountant and workpapers is aptly described:

> "Though prepared by . . . [the accountant] for use by him in the performance of his work, the work papers were scarcely public documents. They embody countless items of information relating to . . . purely personal affairs, including itemizations and summaries of data prepared directly from . . . bank statements, cancelled checks, and similar records. They were plainly intended for no eyes but those . . . [the taxpayer] might designate. To pretend that such papers did not in substance reflect matter personal and private . . . would be to condone the very 'shifts and subterfuges' which the government calls upon us to condemn." *Id.,* at 471-472.

The Court, *Wilson* v. *United States,* 221 U.S. 361 (1911), has never demanded that the claimant be the author or originator of documents to meet the "private documents" test:

> "It is at once apparent that the mere fact that the appellant wrote, or signed, the official letters copied into books, neither conditioned nor enlarged his privilege. *Where one's private documents would tend to incriminate him, the privilege exists although they were actually written by another person. Id.,* at 378 (emphasis supplied).[22]

Petitioner's repeated claims that workpapers are not "private documents" contains a certain element of

[22] Petitioners concede the validity of the *Wilson* holding by stating: "Petitioners in No. 74-18 argue . . . that documents can be the private papers of the claimant even if they are written by another person. We do not contend to the contrary" (Pet. Br. 31 n. 15).

dubiety. Disclaimers of privacy along with challenges to examine the "essential nature" of the documents obfuscate petitioner's bare admission that the "essential nature" of workpapers is one of privacy and confidentiality. Petitioner's Brief at 31 note 15 contains the following language which is dispositive to the instant case:

> "However, for purposes of the Fifth Amendment, there is a difference between records prepared by the taxpayer's full-time employee with respect to which he does not relinquish possession and control in a non-privileged relationship and records prepared by an outside accountant."

By the above statement, petitioner patently admits the private nature of workpapers prepared by taxpayer's employee accountant, but does not find the same requisite element of privacy when workpapers containing identical private financial data are prepared by an independent accountant.

This is the very situation the Court sought to protect in *Wilson*—private information drafted or compiled by a third party. If *Wilson* is correctly applied in conjunction with petitioner's request to examine the nature of the documents, the distinction between employee accountant and independent accountant is meaningless for constitutional purposes. Once the nature of workpapers is ascertained to be "private documents", as petitioner so admits, the status of the original scrivener lends nothing to the analysis. Along this same vein, transfer type or duration would seem to be eliminated from the constitutional equation. Using petitioner's own formula, analysis must cease once personal possession of private documents is ascertained.

Amicus submits that the *Kasmir* fact situation more than meets the possession of private papers test.

B. Petitioner's Emphasis on Couch Is an Additional Reason for Reexamination.

Petitioner avers that *Couch* supports the long-standing rule of law that third-party records do not come within the Fifth Amendment for purposes of a privilege claim:

> "[T]he taxpayer could have claimed no privilege of self-incrimination in the accountant's workpapers had the summons been served while they were held by the accountant. *Couch* established that a taxpayer's own books and records are not protected when they are in the possession of an accountant, and it follows *a fortiori* that compelled production of accountant's workpapers . . . would not constitute 'extortion of information from the accused himself that offends our sense of justice' " (Pet. Br. 23-24) (citation omitted).

Section I, *supra,* discusses the difficulties engendered by the *Couch* holding. For reasons stated therein, amicus rejects any reliance petitioner may place upon the *Couch* rule of law. *Kasmir* should stand or fall on the personal possession of private papers argument without reference to *Couch* which should be reexamined independent of the present fact situation.

CONCLUSION

For the foregoing reasons, amicus respectfully submits that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

STANLEY H. STEARMAN
Attorney for Amicus
1717 Pennsylvania Ave., N.W.
Suite 1200
Washington, D.C. 20006

MARK A. GOLD,
of Counsel

ELMER F. HECKINGER, President
ALBERT R. VAN TIEGHEM, First Vice-President
W. R. LAMPLEY, JR., Second Vice-President
CHARLES H. EARP, Secretary-Treasurer
RUDOLPH J. PASSERO, Chairman
National Affairs Committee
JON C. BEDNERIK, Director of Government Affairs

August, 1975

APPENDIX A

APPENDIX A

National Society of Public Accountants Rules of Professional Conduct

RULE No. 1: CONFIDENTIALITY

A member shall not violate the confidential relationship between himself and his client or former client.

RULE No. 2: CONTINGENT FEES

Professional service shall not be rendered or offered for a fee which shall be contingent upon the finding or result of such service. This rule does not apply to cases involving federal, state, or other taxes, in which the findings are those of the tax authorities and not those of the member. Fees to be fixed by courts or other public authorities, which are therefore of an undetermined amount at the time the engagement is undertaken, are not regarded as contingent fees within the meaning of this rule.

RULE No. 3: INDEPENDENCE

A member or a firm of which he is a partner or shareholder shall not express an opinion on financial statements of an enterprise unless he and his firm are independent of such enterprise. Accordingly, a member shall not express an opinion on financial statements of an enterprise financed in whole, or in part, by public distribution of securities or on financial statements for use as a basis of credit if he or a member of his immediate family owns or is committed to acquire a substantial financial interest in the enterprise, or during the period covered by the examination he has been a director, officer or employee of the enterprise unless such interest or relationship is disclosed in the report.

RULE No. 4: USE OF FIRM NAME

A member shall not allow any person to practice in his corporate, partnership or individual name who is not a

partner, professional corporation co-shareholder or in his employ.

Rule No. 5: Conflict of Interest

A member shall not engage simultaneously in any business or occupation with that of the practice of public accounting, which is incompatible or inconsistent therewith.

Any business relationship which compromises a member's independence, integrity or professional standing violates this Rule.

Rule No. 6: Financial Statements

In expressing an opinion on representations in financial statements which he has examined, a member shall:

(a) Acquire sufficient information to warrant the expression of an opinion, or if his exceptions are sufficiently material to negate the expression of an opinion, he shall clearly disclaim an opinion; and

(b) Disclose any material fact known to him, the disclosure of which is necessary to make financial statements not misleading; and

(c) Report any material misstatement known to him to appear in the financial statement; and

(d) Direct attention to any material departure from generally accepted auditing procedures applicable in the circumstances.

Rule No. 7: Responsibility For Work

A member shall not sign a report purporting to express his opinion as the result of an examination of financial statements, unless they have been examined by him, or by a member or employee of his firm.

Rule No. 8: Forecasts

A member shall not permit his name to be used in conjunction with any special purpose statement prepared for his clients that anticipates results of future operation, unless he discloses the source of the information used and what assumptions he has made, and unless he indicates he does not vouch for the accuracy of the forecast.

Rule No. 9: Commissions

A member shall not pay a commission to obtain a client, nor shall he accept a commission for a referral to a client of products or services of others. This Rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

Rule No. 10: Solicitation

A member shall not directly or indirectly solicit clients, or encroach upon the practice of another accountant in public practice, but it is his right to give proper service and advice to those asking for such service and advice.

Rule No. 11: Advertising

A member shall not advertise his professional attainments or services.

Rule No. 12: Firm Names

A member in practice as an individual shall not use a firm name or plural term as "and company" or "and associates" or any other designation indicating anything other than individual ownership.

RULE No. 13: PROFESSIONAL REFERRALS

A member who receives an engagement for services by referral from another accountant shall not discuss or accept an extension of his services beyond the specific engagement without first consulting with the referring accountant.

RULE No. 14: CRITICISM

A member shall not, without making a proper investigation to determine that the criticism is warranted, criticize another accountant in the presence of anyone other than the accountant being criticized.

RULE No. 15: OFFER OF EMPLOYMENT

Direct or indirect offer of employment shall not be made by a member to any employee of another accountant in public practice without first informing such accountant. A member may negotiate with anyone who of his own initiative or in response to public advertisement shall apply for employment.

APPENDIX B

APPENDIX B

National Society of Public Accountants Rules of Professional Conduct for Members in Tax Practice

RULE No. 1

All tax returns prepared by a member or an employee should be signed with the firm name by the member himself, a member of the firm, or a member of his staff.

RULE No. 2

An unenrolled member must be ever mindful of the nature of the representation which may be required to fully protect a taxpayer's interests, and in appropriate cases should recommend that he consult an enrolled agent, an attorney, or a person admitted to practice before the Tax Court.

RULE No. 3

A member is not considered to be expressing an opinion on the representation in any financial statements required as a part of a tax return prepared and signed by himself, or a member or employee of his firm.

RULE No. 4

The responsibility of a member to review advice previously given, and tax returns previously prepared and filed, depends upon the nature of the contract between him and his client.

RULE No. 5

A member should have a clear understanding with his client, as to whether his responsibility ends with the preparation of a tax return, or other service based upon current law, or whether he is expected to inform his client of subsequent developments of the law which may materially affect the tax return as prepared, or the advice given.

RULE No. 6

In situations where the applicable law is unsettled, or where the application of the law to the facts at hand is uncertain, the member has a duty to explain the probable effects of the various alternatives to the taxpayer who must make the final decision as to the position to be taken.

RULE No. 7

A member must not permit his client to treat an item having a bearing on his tax liability in a manner for which there is no reasonable basis in law or fact. Should the client insist upon the item being stated on the return incorrectly, the member should withdraw and refuse to prepare the return.

RULE No. 8

A member is under duty to resolve all doubts in favor of his client when there is a reasonable basis in law and fact for the position taken and the client is advised of the alternatives and the probable effects thereof.

RULE No. 9

It is not incompatible for a tax practitioner to give a client tax advice, prepare his tax return, act as his advocate in tax controversies with Internal Revenue Service, and express a professional opinion on the fairness of the presentation in a balance sheet which includes the income tax liability, provided he is qualified under state law to do so, and is an enrolled agent.

RULE No. 10

If the client will not permit sufficient disclosures to be made to properly calculate the tax due, then the member should withdraw from the assignment.

RULE No. 11

A member is under duty to comply with all rules and regulations of the Treasury Department governing practice before the Internal Revenue Service.

RULE No. 12

A member should be considerate and respectful in dealing with representatives of the Internal Revenue Service.

RULE No. 13

An enrolled member should not make improper use of his Treasury Card.

RULE No. 14

A member should avoid the appearance of an unduly close relationship with representatives of the Internal Revenue Service.

RULE No. 15

A member should not further by any means unauthorized practice by others.

RULE No. 16

A member has no obligation to communicate with the Internal Revenue Service with respect to a person whom he suspects has been grossly negligent or who may have committed fraud against the government.

RULE No. 17

In preparing an unaudited tax return, a member is not required to go beyond the information given to him by the client, unless he has reason to believe that there is more than a slight possibility that it is inaccurate.

RULE No. 18

Members are discouraged from using on tax returns such statements as "Prepared without audit" or "Prepared from information supplied by taxpayer" as they have no legal significance and are subject to misinterpretation. The statement signed by the member on the tax return is all that is required.

RULE No. 19

It shall not be considered soliciting for a member to mail notices to regular clients advising them of an approaching filing date.

RULE No. 20

It shall not be considered soliciting for a member to contact regular clients, or anyone else for whom he has prepared a tax return or rendered tax service, in order to inform them of developments in the law which have occurred since the return was prepared or the advice given, and which affect the return or the advice. (A member may have an obligation to advise of such subsequent developments.)

RULE No. 21

A member must not hold himself out under any title which is not sanctioned by local practice in his profession.

see

74-18